

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant : Robert Markes.  
Appl. No. : 10/659,291  
Filed : 11 September 2003  
Title : SAMPLING INSTRUMENT  
Group Art Unit: 1797  
Examiner : Lyle Alexander  
Docket No. : 1339BGN-US  
Honorable Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

REMARKS

Applicant has carefully studied the outstanding Official Action mailed on March 30, 2009. This response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Examiner has called for restriction for examination purposes as follows:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-20, drawn to an apparatus having a photodiode, classified in class 422, subclass 62.
- II. Claim 21, drawn to a method of optical analysis, classified in class 436, subclass 164.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method can be performed with a different light source (e.g. not a photodiode) such as a fluorescent light source.

Examiner has then stated that claims 1-20 have been elected and claim 21 is withdrawn. This is respectfully traversed.